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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,532	03/01/2004	Mark S. Gasaway	HO-P02877US0	5168

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EXAMINER

MILLS, DANIEL J

ART UNIT	PAPER NUMBER
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3679

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/25/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/790,532

Applicant(s)

GASAWAY

Examiner

Daniel J. Mills

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 10 and 12-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10 and 12-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/19/2006 has been entered.

Product by Process

Claim 13 is a product by process claim, determination of patentability in "product by process" claims is based on product itself, even though such claims are limited and defined by process, and thus product in such claim is unpatentable if it is same as, or obvious from, product of prior art, even if prior product was made by different process.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 12 and 19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed,

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had possession of the claimed invention. The fence brace assembly comprising a notch in a tab was not originally disclosed as also having a recessed surface capable of receiving a bent tab, in fact it seems that these two designs are mutually exclusive.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-7, 10, 12-13, 15, 16, 18, and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 2-7, 10, 12-13, 15, and 16, applicant claims modifications of what is admitted as old in the art in independent claims 1 and 14, but does not indicate that these modifications are improvements over the prior art, or whether these modifications constitute what is old in the art.

Regarding claims 18 and 24, the limitation "silicon sealer" is unclear. does applicant intend to claim --silicone sealer-- (such as a typical silicone caulk) or is "silicon" intended?

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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20, 21, 23, and 24

DB Claims ~~20-24~~ are rejected under 35 U.S.C. 102(b) as being anticipated by

^
Sweeney et al. (Sweeney - US 823,451).

Regarding claim 20, Sweeney discloses a kit for assembling a fence brace assembly having component parts capable of being assembled, the kit comprising: at least one post (1), capable of being joined to at least one member (4); the at least one member, capable of being joined to the post; said post comprising: a stabilizing surface and a securing surface, said stabilizing surface and said securing surface being substantially opposite each other and having an inner surface and an outer surface at least one tab-slot (14) in said securing surface, said tab-slot capable of accepting and engaging a notched tab (15) by the via rotation of the tab (the member is capable of being spun as it is inserted): at least one tab end consisting of at least one tab and a recessed non-tab surface (18) at least one tab being notched (14 is "notched" in that it has a reduced section thickness as compared to 14) and thereby being capable of engaging with the tab-slot when said member is rotated; said recessed non-tab surface shaped to be capable of coming into substantially continuous flush contact with the inner surface of said securing surface when said tab is engaged via rotation of the member to engage the tab with the tab-slot and said member and said post being capable of being joined by inserting said tab end of said member into said opening in said stabilizing surface of said post and rotating said member to engage the notched tab in the tab slot, and therefore being capable of forming a substantially continuous flush contact between the non-tab surface of the tab end of the member and the inner surface of said securing surface when said member is joined to said post.

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Regarding claim 21, Sweeney discloses a kit for assembling a fence brace assembly wherein said opening is located directly, opposite to at least one tab-slot, so that said member is capable of being rotated into the engaged position with said post, such that when the post and the member are joined, the longitudinal axis of the member is oriented at an angle of about 90° relative to said stabilizing surface.

Regarding claims 23 and 24, Sweeney discloses a kit for assembling a fence brace assembly wherein the area of substantial contact between the non-tab surface of the member and the inner surface of the post is capable of being sealed by a silicon sealer.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sweeney et al. (Sweeney - US 823,451) in view of Shaw (US 6,406,003).

Regarding claim 22, Sweeney discloses a kit for assembling a fence brace assembly but fails to disclose that the longitudinal axis of the member is oriented at a non 90° angle relative to said stabilizing surface.

Shaw teaches an angle brace assembly wherein the longitudinal axis of the

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member (64) is oriented at a non 90° angle relative to said stabilizing surface (surface of 62B) in order to brace the post (62B) (column 4 lines 56-57). Therefore it would have been obvious to one of ordinary skill in the art at the time of applicant's invention, to modify the arrangement of Sweeney to include an angle brace assembly as taught by Shaw wherein the longitudinal axis of the member is oriented at a non 90° angle relative to said stabilizing surface, such that one lower tab (39) of the member (35) is inserted into the upper tab-slot (33) of the post (13).

Claims 1, 2, 4-7, 10, 12-15, 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's admitted prior art in view of Querengesser (US 3,021,116) and Sweeney et al. (Sweeney – US 823,451).

Regarding claims 1, 2, 4-7, 10, 12-15, and 19, applicant's admitted prior art demonstrates a fence brace assembly as claimed with the exception of said tab having a notch; said tab-slot shaped to engage said tab when said member is rotated to engage the tab with the tab-slot and said member having a tab end consisting of at least one tab and a recessed non-tab surface, said recessed non-tab surface shaped to come into substantially continuous flush contact with the inner surface of said securing surface when the tab is engaged via rotation of the member to engage the tab with the tab-slot via the notch.

Querengesser teaches a tab (15) having a notch (17); a tab-slot (14) shaped to engage said tab when a member (11) made of metal tubing is rotated to engage the tab with the tab-slot and said member having a tab end consisting of at least one tab and a

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recessed non-tab surface (16), said recessed non-tab surface shaped to come into substantially continuous flush contact with a surface of said securing surface when the tab is engaged via rotation of the member to engage the tab with the tab-slot via the notch for the purpose of producing a fence of sturdy, simple character, and of particularly neat appearance. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention, to modify applicant's admitted prior art to include the teachings of Querengesser for the purpose of producing a fence of sturdy, simple character, and of particularly neat appearance.

Querengesser fails to teach that the surface of the securing surface is the inner surface. Sweeney teaches that the surface of the securing surface that the recessed non-tab surface comes into substantially continuous flush contact with is the inner surface and wherein a tab is bent over into a recess (as shown in Figure 3) for the purpose of producing a joint of great strength and durability free from crevices. Accordingly it would have been obvious at the time of applicant's invention to modify applicant's admitted prior art and the teachings of Querengesser such that the surface of the securing surface that the recessed non-tab surface comes into substantially continuous flush contact with is the inner surface and wherein a tab is bent over into a recess for the purpose of producing a joint of great strength and durability free from crevices as taught by Sweeney.

Regarding claims 17 and 18, it would have been an obvious matter of engineering design choice to one of ordinary skill in the art at the time of applicant's invention, to modify the arrangement of applicant's admitted prior art in view of

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Querengesser and Sweeney to include silicon sealed joints to reduce the chance of corrosion.

Claims 3 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's admitted prior art in view of Querengesser (US 3,021,116) and Sweeney et al. (Sweeney - US 823,451) and further in view of Shaw (US 6,406,003).

Regarding claims 3 and 16, applicant's admitted prior art in view of Querengesser and Sweeney results in a kit for assembling a fence brace assembly but fails to disclose that the longitudinal axis of the member is oriented at a non 90° angle relative to said stabilizing surface.

Shaw teaches an angle brace assembly wherein the longitudinal axis of the member (64) is oriented at a non 90° angle relative to said stabilizing surface (surface of 62B) in order to brace the post (62B) (column 4 lines 56-57). Therefore it would have been obvious to one of ordinary skill in the art at the time of applicant's invention, to modify the arrangement of applicant's admitted prior art in view of Querengesser and Sweeney to include an angle brace assembly as taught by Shaw wherein the longitudinal axis of the member is oriented at a non 90° angle relative to said stabilizing surface, such that one lower tab (39) of the member (35) is inserted into the upper tab-slot (33) of the post (13).

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Earl (US 2,710,053), Blouin (US 5,803,438), Greene (US 4,137,576) are cited for pertaining to tab-slot joints.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel J. Mills whose telephone number is 571-272-8115. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 571-272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



DJM
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